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25889	7590	01/25/2010		EXAMINER
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576				MUROMOTO JR, ROBERT H
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/564,426

Filing Date: January 11, 2006

Appellant(s): CRUZ-SAGREDO GARCIA, JUAN, MARIA

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Elizabeth Collard Richter  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/14/2009 appealing from the Office action  
mailed 7/29/2009.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2660406	Brickman	11-1953
5577712	White	11-1996

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-13, 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Brickman US patent 2,660406.

Claim 1 recites "Sclerophyllic mesh", which has been referenced as a synonym for "barbed wire" by applicant in the instant specification.

Brickman clearly discloses a barbed wire and therefore "Sclerophyllic mesh" as defined by applicant.

Brickman discloses the term 'electrowelded' as this is a product by process limitation. The Brickman mesh recites 'welded' wire. The MPEP has established that once the examiner has shown an essentially identical product that a 102 or 103 rejection is proper and that the burden has shifted to applicant to prove that the recited process steps result in a different structure than that of the prior art.

Figures clearly show barbs (sharp points) on the 'intersections of said metallic bars or wires', as claimed. Brickman discloses an embodiment welding the barbs to the intercrossed wires as in claims.

Figure 5, 6, and 7 show an embodiment where the barbs are joined to the wire intersections 38, extend obliquely and perpendicularly (since no point of reference is

given to determine the angles), curved and straight barbs in figure 7, fence mesh shapes other than square in figure 10, barbs from one side in figure 7 and from both sides (left and right opposing sides) in figure 3, as claimed.

Further figures 2, 3, 5, 6 and 7 all clearly show welded cross wires (longitudinal wires 10, 16; intersecting with transverse wires (4, 14) that at the intersections of the bars or wires have barbs (12, 20, 22, 24) as claimed.

Also the disclosure clearly states, " barbed wire is made as follows: welded wire fabric 2, of the desired weight having the spacing of the cross wires the same 55 as the desired spacing of the barbs, is provided. The cross wires are cut on a bias as shown in Figure 1 and the cut wires are, bent to form a substantially V-shaped barb 12. Each cross wire is bent in a direction opposite to that of the wires adjacent thereto as clearly shown in Figures 2 and 3. In making a barbed wire mat, such as shown in Figure 4, substantially the same method is followed. Part of the longitudinal wires 14 are cut on a bias and bent into barbs 18 which extend from the mat in one direction. The completed mat consists of a plurality of longitudinal wires 14 and a plurality of cross wires or pickets 16 to which barbs 18 are fastened. This mat may be used in fields and roads to puncture pneumatic tires of enemy planes or land vehicles. The barbs may assume various shapes. As shown in Figure 5, the barb 20 is bent on a sharp radius around the cross wire 16. The barb 22 of Figure 6 is bent around the wire 16 on a larger radius and extends upwardly at a sharper angle than the barb 20."

Figures 2, 3, 5, 6, and 7 all clearly show various claimed barb arrangements.

Figure 2 and 3 clearly show barbs 12 extending in two different opposing directions, i.e. two sides of the mesh as claimed.

Figures 8 and 9 clearly show rectangular mesh, which is not a square as newly claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brickman in view of White US 5577712.

Although Brickman has clearly disclosed all limitations of the claims above, Brickman does not teach the use of a different material for the barbs.

However, White teaches, "Barbed wire has been commonly used for many years to fence in land and to act as a deterrent against trespass not only by humans but by animals as well. Barbed wire fencing also has a preferred use to contain certain types of farm animals, such as cows, horses, sheep, etc., on a certain piece of property..."

Although the barbs are preferably metal, *the barbs may also be formed from a non-metallic material provided that they can be formed with sufficiently sharp ends to provide the necessary deterrent effect against animals pressing against the barbed wire fence.*"

Nothing in Brickman precludes at least some of the vertical wires or horizontal wires whichever wires are cut to form the barbs, from being formed of non-metallic materials, resulting in some of the barbs being made from non-metallic materials.

Therefore it would have been obvious to one of ordinary skill in the art of barbed wire fencing to use barbs made from any metallic or non-metallic material provided that they can be formed with sufficiently sharp ends to provide the necessary deterrent effect of the barbed wire fence.

#### **(10) Response to Argument**

Appellant's arguments filed 10/14/2009 have been fully considered but they are not persuasive.

Appellant has not overcome the burden of evidence with regard to product-by-process limitation "electrowelded" resulting in a materially different product than a "welded" mesh.

Arguments regarding barbs not being at 'intersections of bars or wires' is an error. In addition to rejection above to further illustrate that barbs are at welded intersections, the examiner cites directly from the patent:

"The cross wires are cut on a bias as shown at 10 in figure 1 and the cut wires are bent to form a substantially V-shaped barb. Each cross wire is bent in a direction opposite to that of the wires adjacent thereto as clearly shown in Figures 2 and 3. In making a barbed wire mat, such as shown in Figure 4, substantially the same method is followed. Part of the longitudinal wires 14 are cut on a bias and bent into barbs 18 which extend from the mat in one direction. The completed mat consists of a

**plurality of longitudinal wires 14 and a plurality of cross wires or pickets 16 to which barbs 18 are fastened."**

So if the wires are welded into fabric and then the cross wires are cut to form the barb, then the barbs are without a doubt formed at the intersections of the wires, as claimed. The arguments seem drawn to the claim's limitations as if the claim recited every intersection of the mesh, however the claim recites barbs 'comprising sharp points electrowelded to the intersections of said metallic bars or wires'. The intersections of the bars or wires are clearly present in figures 3, 5, 6, and 7 that show sharp points 12 formed around intersections of metallic bars or wires, as claimed.

Subsequently, the patent states, "Each cross wire is bent in a direction opposite to that of the wires adjacent thereto as clearly shown in figures 2 and 3."

Since no point of reference is claimed for determining the "two sides of the mesh", the oppositely right and left oriented barbs do extend to the claimed "two sides of the mesh".

Arguments with regard to the use of a different material are also incorrect. Nothing precludes some wires of mesh that are to be cut and therefore form the barbs of Brickman from being made of a different well-known non-metallic material as claimed.

Since these are the arguments presented the rejection remains and are considered to be proper.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Robert H Muromoto, Jr./

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Conferees:

/GARY L. WELCH/

Supervisory Patent Examiner, Art Unit 3765

/Michael Phillips/

RQAS